

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN B. JOHNSON,

Plaintiff,

v.

UNITED STATES (FBI),

Defendant.

No. 2:22-cv-0727-TLN-CKD PS

FINDINGS AND RECOMMENDATIONS

AND ORDER

Plaintiff, who proceeds without counsel, initiated this action on April 28, 2022, with a complaint on a form for a “Bivens” action.^{1 2} Plaintiff’s complaint named the Federal Bureau of Investigation (“FBI”) as the sole defendant and alleged the FBI used unlawful tactics in violation of plaintiff’s rights, although the specific facts underlying the claim were difficult to discern. (ECF No. 1.) By order dated May 20, 2022, plaintiff’s complaint was dismissed for failure to state a claim. (ECF No. 5.) Plaintiff was granted 30 days to file an amended complaint. (Id.)

The time granted for the filing of an amended complaint has expired and plaintiff has not filed an amended complaint or sought an extension of time to do so. Instead, plaintiff has filed a motion seeking “to preserve evidence” and a document entitled “notice” which also appears to

¹ Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971).

² This matter is before the undersigned pursuant to Local Rule 302(c)(21). See 28 U.S.C. § 636(b)(1).

1 request a court order for the preservation of evidence. (ECF Nos. 7, 8.)

2 As set forth in greater detail in the screening order dated May 20, 2022 (ECF No. 5 at 3),
3 plaintiff fails to establish this court's subject matter jurisdiction over a claim for damages against
4 the FBI, an agency of the United States, as the sole defendant. See, e.g., United States v. Mitchell,
5 463 U.S. 206, 212 (1983). "[T]he United States has not waived its sovereign immunity in actions
6 seeking damages for constitutional violations." Thomas-Lazear v. F.B.I., 851 F.2d 1202, 1207
7 (9th Cir. 1988).

8 The court's own records reflect that plaintiff has attempted to raise several similarly vague
9 claims against the FBI as the sole defendant in prior cases and has not been able to state a
10 cognizable claim. See Johnson v. United States (FBI), No. 2:21-cv-0959-JAM-CKD; Johnson v.
11 FBI, No. 2:20-cv-2214-TLN-DB; Johnson v. FBI, No. 2:21-cv-2359-JAM-EFB; see also United
12 States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980) ("a court may take judicial notice of its own
13 records in other cases"). Plaintiff has been repeatedly informed that a "Bivens" action does not lie
14 against a federal agency, and instead would only lie against an individual officer of the FBI. (ECF
15 No. 5 at 3-4; see also Johnson, No. 2:21-cv-0959-JAM-CKD, ECF Nos. 3, 7, 13.) Despite these
16 repeated admonitions and the order dismissing plaintiff's original complaint with leave to amend,
17 plaintiff has not filed an amended complaint. Accordingly, it will be recommended that this
18 action be dismissed without further leave to amend for lack of subject matter jurisdiction and
19 failure to state a claim.

20 **Recommendations**

21 For the reasons set forth herein, and for the reasons set forth in the court's screening order
22 dated May 20, 2022 (ECF No. 5), IT IS RECOMMENDED that this action be dismissed without
23 further leave to amend for failure to state a claim and lack of subject matter jurisdiction.

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
26 days after being served with these findings and recommendations, any party may file written
27 objections with the court and serve a copy on all parties. Such a document should be captioned
28 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections

1 within the specified time may waive the right to appeal the District Court's order. Turner v.
2 Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir.
3 1991).

4 **Order**

5 In light of the recommendation above, IT IS ORDERED that all motion practice in this
6 action is stayed pending resolution of the findings and recommendations. With the exception of
7 objections to the findings and recommendations, non-frivolous motions for emergency relief, or
8 an amended complaint stating a cognizable claim, the court will not entertain or respond to any
9 motions or other filings until the findings and recommendations are resolved.

10 Dated: June 29, 2022



11 CAROLYN K. DELANEY
12 UNITED STATES MAGISTRATE JUDGE
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